STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

In the matter of XO Illinois, Inc. Petition for Arbitration pursuant to Section 252 (b) of the Telecommunications Act of 1996 to establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois	)	Docket No. 01- 0466

VERIFIED STATEMENT OF DOUGLAS W. KINKOPH

Q. Could you please state your name, business title and business address?

A. Yes, my name is Douglas W. Kinkoph. I am employed by XO Communications, Inc. as its Vice President, Regulatory and External Affairs, and my business address is Two Easton Oval, Suite 300, Columbus, Ohio 43219.

Q. Would you please describe your educational and employment background?

A. Yes. I obtained a Bachelor of Science Degree in Telecommunications Management from Ohio University and then a Masters of Science Degree in Administration from Central Illinois University. In 1985, I was employed by the Public Utilities Commission of Ohio as a Telecommunications Analyst. In 1986, I was employed by LCI International where I would eventually become its Vice President for Regulatory and Legislative Affairs. While at LCI, my responsibilities included the development and integration of a national regulatory and legislative public policy strategy, carrier relations, billing operations and merger and integration activity. I was also specifically involved with negotiations of interconnection agreements with Regional Bell Operating Companies, including Ameritech. In 1998, I joined XO (then NEXTLINK) I am responsible for XO's Regulatory operations in SBC's Ameritech Region, which includes negotiation of interconnection agreements. I also have Regulatory responsibility for XO Long Distance Services, Inc.

Q. Has XO sought to negotiate interconnection agreements with Ameritech?

Yes. XO requested negotiations on January 15, 2001. XO has attempted to negotiate interconnection agreements with Ameritech, including an interconnection agreement for Illinois. XO negotiated in good faith in accordance with Section 251(c)(1) of the Federal Act. XO has attempted to establish terms and conditions for a binding interconnection agreement with Ameritech to obtain the facilities, services, interconnection arrangements, and network elements available under Section 251 of the Federal Act. Since XO initiated negotiations, XO and Ameritech have held a number of telephone conference calls and exchanged drafts of the Interconnection Agreement. The parties were unable to reach agreement on contract language and policy issues. On May 30, 2001, in an effort to avoid additional expenses related to negotiating and/or arbitrating an interconnection agreement, XO decided to exercise its rights under Section 252(i) of the Federal Act.

By letter dated May 30, 2001, (Attached to XO's Petition as Appendix C) XO Illinois informed Ameritech of its intention to opt into the Focal-Ameritech Illinois agreement ("Focal-Illinois Agreement"). In its letter, XO stated that it was entitled to opt into the entire Focal-Illinois Agreement. XO stated the interconnection agreement should also include the following amendments:

> (i) XO's existing and approved xDSL amendment; (ii) XO's existing and approved SBC/Ameritech UNE amendment; (iii) XO's existing and approved SBC/Ameritech FCC Merger Conditions amendment; (iv) the SBC/Ameritech 13 State Directory Assistance Appendix; (v) SBC/Ameritech Physical and Virtual Collocation Appendices compliant with the FCC's existing and effective collocation rules and orders (vi)

> current Illinois pricing appendices; (vii) an amendment incorporating performance measures adopted by the Illinois Commerce Commission ("ICC"); and (viii) language effectuating the ICC's decisions governing facilities modification and special construction.

Q. How did Ameritech respond to XO's May 30 request to opt-in to the Focal Agreement.

A. Ameritech responded to XO's request in a letter dated June 18, 2001 (Attached to XO's Petition as Appendix D). In that letter, Ameritech stated that it had no objection to XO Illinois opting into the Focal-Illinois Agreement, but that XO:

> . . . may not opt into the terms and provisions for ISP compensation in the Focal Agreement because the recent FCC order ruled that such ISP compensation provisions are outside the permissible scope of Section 252(i) as of April 18, 2001.

Ameritech added that it was refusing to allow XO to opt into not only the Internet Service Provider ("ISP") compensation portion of the agreement, but also the entire portion of the agreement dealing with rates, terms and conditions for all intercarrier compensation, including the physical routing, recording of minutes of use, billing and payment terms.

Q. Does XO agree with Ameritech that it may not opt-in to the reciprocal compensation portion of the Focal agreement as a result of the recent FCC Order?

A. XO recognizes that the payment of reciprocal compensation for calls terminated with ISPs must be consistent with the FCC's *ISP Order*, FCC Order 01-131 (April 27, 2001) (the "FCC Order"). One portion of that order prohibits carriers from using Section 252(i) to opt into the ISP reciprocal compensation provisions of existing agreements. The FCC stated:

> The interim compensation regime we establish here applies as carriers re-negotiate expired or expiring interconnection agreements. It does not alter existing contractual obligations, except to the extent that parties are entitled to invoke contractual change-of-law provisions. This Order does not preempt any state commission decision regarding compensation for

> ISP-bound traffic for the period prior to the effective date of the interim regime we adopt here. Because we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, however, state commissions will no longer have authority to address this issue. For this same reason, as of the date this Order is published in the Federal Register, carriers may no longer invoke section 252(i) to opt into an existing interconnection agreement with regard to the rates paid for the exchange of ISP-bound traffic. Section 252(i) applies only to agreements arbitrated or approved by state commissions pursuant to section 252; it has no application in the context of an intercarrier compensation regime set by this Commission pursuant to section 201.

FCC Order, paragraph 82 (footnotes omitted).

Q. If XO may not opt into the Focal Agreement ISP compensation rates, then what rates should apply?

A. The FCC has established a rate cap that will apply to reciprocal compensation for ISP traffic. Pursuant to the FCC Order, however, that rate cap is not automatically applicable. Instead, a carrier must affirmatively elect to initiate the interim federal inter-carrier compensation regime and also agree to follow the FCC's "mirroring" requirement under which it must generally offer to exchange all 251(b)(5) "local" traffic at the applicable rate cap level with any carrier in the state. The FCC stated:

> It would be unwise as a policy matter, and patently unfair, to allow incumbent LECs to benefit from reduced intercarrier compensation rates for ISP-bound traffic, with respect to which they are net payors, while permitting them to exchange traffic at state reciprocal compensation rates, which are much higher than the caps we adopt here, when the traffic imbalance is reversed. Because we are concerned about the superior bargaining power of incumbent LECs, we will not allow them to "pick and choose" intercarrier compensation regimes, depending on the nature of the traffic exchanged with another carrier. The rate caps for ISP-bound traffic that we adopt here apply, therefore, *only* if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5) at the same rate. Thus, if the applicable rate cap is $.0010/mou, the ILEC must offer to exchange section 251(b)(5) traffic at that same rate. Similarly, if an ILEC wishes to continue to exchange ISP-bound traffic on a bill and keep basis in a state that has ordered bill and keep, it must offer to exchange all section 251(b)(5) traffic on a bill and keep basis. For those incumbent LECs that

choose *not* to offer to exchange section 251(b)(5) traffic subject to the same rate caps we adopt for ISP-bound traffic, we order them to exchange ISP-bound traffic at the state-approved or state-arbitrated reciprocal compensation rates reflected in their contracts. This "mirroring" rule ensures that incumbent LECs will pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic.

FCC Order, paragraph 89. (footnotes omitted)

Q. Has Ameritech Illinois indicated that it is willing to exchange all traffic subject to the FCC's rate cap?

A As of this date, Ameritech Illinois has not indicated its acceptance of the FCC requirement. Additionally, in its negotiations with XO, Ameritech has not proposed rates that are consistent with the FCC's mirroring rule.

Q. What rates does XO propose for the termination of ISP traffic?

A. Given that XO requested to opt-in to the Focal agreement after publication of the FCC's rules in the Federal Register, XO cannot opt into the ISP reciprocal compensation portion of the Focal agreement. Therefore, XO, has proposed language that would remain in effect until such time as Ameritech has notified XO of its intent to implement the "mirroring rule" set forth in paragraph 89 of the FCC Order. That language is similar to the language in the Focal agreement. A copy of XO's proposed language was attached to XO's petition as Appendix E.

Q. Does XO agree with Ameritech that the entire inter-carrier compensation portion of the Focal Agreement must be rewritten?

No. XO believes that Ameritech may not bootstrap all negotiations related to "all intercarrier compensation" under the pretext of complying with the FCC Order. Additionally, despite the fact that Ameritech promised to propose new terms and conditions "shortly" after XO made its Section 251(i) request on May 30, 2001, Ameritech did not provide its proposed language until July 5, 2001. XO is in the process of evaluating that proposal. In general, I can say that Ameritech has proposed a compensation scheme that is completely different from the one in the Focal Agreement approved by this Commission for not only ISP traffic, but also for all voice traffic. Furthermore, the compensation scheme proposed by Ameritech does not contain the rate caps from the FCC Order. In summary, Ameritech has used the FCC Order as an excuse to totally rewrite the reciprocal compensation provisions of the Focal Agreement. Given the nature of Ameritech's overreaching, XO believes that the best approach would be for this Commission to accept XO's proposed language in Appendix E, which would be in place until such time that Ameritech provides XO with written notice that it is opting into the "mirroring rule" set forth in paragraph 89 of the FCC Order and placing rate caps on all traffic

Q. Does XO believe that the Focal agreement can be amended to comply with the FCC Order prior to Ameritech notifying carriers that it will be accepting the FCC's rate caps?

A. No. XO does not believe that Ameritech can randomly decide upon which carriers it will apply the FCC Order. The FCC Order indicates that carriers must indicate acceptance of the mirroring rates on a statewide basis. (FCC Order, paragraph 89, footnote 79.) Therefore, Ameritech must implement the FCC Order across all carriers or not at all. XO also believes that Ameritech cannot unilaterally implement such changes but rather, Ameritech must establish negotiations with XO and other carriers in order to amend the applicable agreements to reflect the FCC Order.

XO has proposed language that would govern the treatment of ISP language until such time as Ameritech notifies XO of its intent to invoke the FCC's rates caps for all carriers. However, until such time as Ameritech has elected to adopt the FCC's rate-caps, there needs to be language in the agreement that clarifies how ISP traffic is to be treated and I believe that the language proposed by XO is consistent with this Commission's Orders.

Q. Does this conclude your verified statement?

A. Yes.